

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 18-172

ASSORTED DRUG PARAPHERNALIA
VALUED AT \$236,010.37,

Defendants-in-rem.

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

Plaintiff, United States of America, brings this complaint in accordance with Supplemental Rule G(2) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action to forfeit to the United States of America items that constitute drug paraphernalia, as that term is defined in 21 U.S.C. § 863(d), that is subject to forfeiture pursuant to 21 U.S.C. § 881(a)(10).

DEFENDANTS-*IN-REM*

2. The Defendants-*in-rem* consists of the following:
- a) Approximately 7,560 assorted glass smoking pipes;
 - b) Approximately 5 glass smoking pipe kits;
 - c) Approximately 611 assorted bongs;
 - d) Approximately 604 assorted bong bowls;
 - e) Approximately 9 gas mask bongs;

- f) Approximately 3 smoking masks;
- g) Approximately 1,112 assorted smoking pipes;
- h) Approximately 481 marijuana grinders;
- i) Approximately 276 assorted concealment containers;
- j) Approximately 550 miscellaneous containers;
- k) Approximately 18 assorted scales; and
- l) Approximately 28 marijuana wax devices.

(hereinafter referred to as “Defendant Drug Paraphernalia”).

3. Defendant Drug Paraphernalia was seized by the United States Drug Enforcement Administration on September 12, 2017 in the District of New Mexico.

4. Defendant Drug Paraphernalia is now, and during the pendency of this action will be, in the jurisdiction of this Court.

JURISDICTION AND VENUE

5. The United States District Court for the District of New Mexico has subject matter jurisdiction under 28 U.S.C. §§ 1345, 1355(a), and 1356.

6. Venue for this civil forfeiture action is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395, as acts or omissions giving rise to the forfeiture took place in this district and the property is found in this district.

7. Upon the filing of this complaint, Defendant Drug Paraphernalia will be arrested by execution of a Warrant for Arrest *In Rem* in the District of New Mexico.

FACTS

8. Lava Rock Hookah Lounge is located at 111 South Solano Drive, Las Cruces, New Mexico 88001.

9. Munther Muhsen is the owner and operator of Lava Rock Hookah Lounge.

10. On January 12, 2017, undercover agents purchased two glass pipes at Lava Rock Hookah Lounge.

11. The glass pipes purchased by the undercover agents at Lava Rock Hookah Lounge on January 12, 2017 are designed for and primarily intended for use in smoking marijuana.

12. The glass pipes purchased by the undercover agents at Lava Rock Hookah Lounge on January 12, 2017 are not traditionally used with tobacco products.

13. On August 30, 2017, two undercover agents entered Lava Rock Hookah Lounge to determine if drug paraphernalia was still being sold there.

14. On August 20, 2017, the undercover agents observed glass pipes, bongs, concealment containers, and marijuana grinders displayed for sale at Lava Rock Hookah Lounge.

15. On September 8, 2017, United States Magistrate Judge Carmen Garza approved a federal search and seizure warrant authorizing the search of Lava Rock Hookah Lounge and the seizure of drug paraphernalia.

16. On September 12, 2017, federal agents executed the federal search and seizure warrant at Lava Rock Hookah Lounge.

17. On September 12, 2017, Defendant Drug Paraphernalia was seized at Lava Rock Hookah Lounge.

18. Each item that is included in Defendant Drug Paraphernalia is primarily intended for use or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under Title 21 of the United States Code.

19. Each item that is included in Defendant Drug Paraphernalia is not traditionally intended for use with tobacco products.

20. On September 12, 2017, smoking masks with bongs attached were displayed for sale at Lava Rock Hookah Lounge.

21. On September 12, 2017, bongs were displayed for sale at Lava Rock Hookah Lounge.

22. On September 12, 2017, glass pipes were displayed for sale at Lava Rock Hookah Lounge.

23. On September 12, 2017, marijuana grinders were displayed for sale at Lava Rock Hookah Lounge.

24. On September 12, 2017, concealment containers were displayed for sale at Lava Rock Hookah Lounge.

25. On September 12, 2017, multiple items decorated with marijuana leaves were displayed for sale at Lava Rock Hookah Lounge.

26. On September 12, 2017, hologram pictures with images of marijuana leaves were displayed for sale at Lava Rock Hookah Lounge.

27. On September 12, 2017, hologram pictures of marijuana leaves and Bob Marley were displayed for sale at Lava Rock Hookah Lounge.

28. Bob Marley is a cultural icon associated with marijuana.

29. On September 12, 2017, a poster with images of marijuana buds, marijuana leaves, and the words “i like BIG buds & i cannot lie.” was displayed at Lava Rock Hookah Lounge.

30. On September 12, 2017, hat with images of marijuana leaves were displayed for sale at Lava Rock Hookah Lounge.

CLAIM FOR RELIEF

31. The United States incorporates by reference the allegations in paragraphs 1 through 30 as though fully set forth in this section.

32. Pursuant to 21 U.S.C. § 881(a)(10), any drug paraphernalia is subject to forfeiture to the United States.

33. Pursuant to 21 U.S.C. § 881(a)(10), no property right may exist in drug paraphernalia.

34. The term “drug paraphernalia” is defined in 21 U.S.C. § 863(d).

35. The term “drug paraphernalia” means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as—

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
- (6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

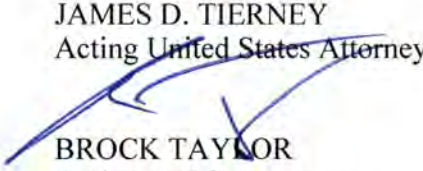
- (7) chamber pipes;
- (8) carburetor pipes;
- (9) electric pipes;
- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or
- (15) cocaine freebase kits.

36. Defendant Drug Paraphernalia is drug paraphernalia, as that term is defined in 21 U.S.C. § 863(d), and it is thus subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(10).

WHEREFORE, Plaintiff seeks arrest of Defendant Drug Paraphernalia and forfeiture of same to Plaintiff, determination of the validity and priority of claims of the Claimants and any Unknown Claimants to Defendant Drug Paraphernalia, costs and expenses of seizure and of this proceeding, and other proper relief.

Respectfully submitted,

JAMES D. TIERNEY
Acting United States Attorney




BROCK TAYLOR
Assistant U.S. Attorney
200 N. Church Street
Las Cruces, NM 88001
(575) 522-2304

28 U.S.C. § 1746 DECLARATION

I am a Special Agent with the Drug Enforcement Administration. I have read the contents of the Complaint for Forfeiture *In Rem* to which this Declaration is attached. The statements contained in the complaint are true to the best of my knowledge and belief.

I declare under penalty of perjury and the laws of the United States of America that this Declaration is true and correct, except as to matters stated on information and belief, and as to those matters I believe them to be true.

Dated: 2/21/2018



Amber N. Westfall, Special Agent
Drug Enforcement Administration

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

DEFENDANTS

Assorted Drug Paraphernalia Valued at \$236,010.37

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brock E. Taylor
Assistant United States Attorney
200 N. Church Street, Las Cruces, NM 88001

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
21 USC 881(a)(10)

Brief description of cause:
Civil Forfeiture Action

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

02/21/2018

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____